cyclists. This was not established in evidence and I did not accept it happened. But I would go on to say that even if it had happened, as long as the plaintiff kept to his path on the road, it is no evidence of negligence. Motor-cyclists like other road users have a right to overtake slower moving vehicles as long as they remain within the confines of their own lanes, do not encroach onto the wrong side of the road and onto the paths of traffic on its correct side of the road and so long as they do not do so recklessly and without consideration for other users of the road.

There were several other submissions made by counsel for defendant on minor discrepancies in the evidence and inconsistencies between pleadings and evidence in court in the case of the plaintiff and his witness, but I was satisfied that these were nothing more than forensic efforts to avoid liability as I saw no substance in the submissions. The issue before the court was whether the accident was caused as a result of the negligent driving of Motor Vehicle No. PA 996 by the defendant. There was no doubt at all in the mind of the court that the accident happened as stated earlier and that it was solely as a result of the negligent driving of the said vehicle by the defendant.

As regards quantum of damages, the parties during the course of the trial had agreed on the sum of $684 as special damages.

According to the evidence plaintiff was a labourer with Lembaga Pengurus Kerajaan Tempatan attached to the Electricity Section. He was earning $160 per month and an average of $40 per month as overtime. He was on full pay leave from date of accident to January 25, 1974, then on half pay from January 27, 1974 to March 11, 1974, and he reported for duty on March 12, 1974. He had no overtime wages because of his condition. Therefore the court awarded $1,580 as special damages for loss of overtime wages. Hence total special damages was $2,264.

The court further awarded him general damages of $27,000 being $6,000 for loss of future earnings and $21,000 for pain and suffering and loss of amenities (Plaintiff suffered 2½" shortening of right lower limb and deformation of the knee joint restricted to about 30° and fixed in an extended position).

Hence the total award was $27,000 general damages with interest at 6% from date of service of writ to judgment, and $2,264 special damages and costs.

Order accordingly.

Solicitors: *Triptipal Singh & Co.; Lim Ewe Hock.*

LEE TECK HUAT v. R & I SECURITIES SDN.

[O.C.J. (Syed Othman J.) June 25, 1977]
[Johore Bahru — Civil Suit No. 208 of 1975]

Practice and Procedure — Applications and Proceedings in Chambers — Appeal from Registrar — 5 day rule — R.S.C. 1957, O. 54 r. 21.

In this case on December 15, 1975 the Senior Assistant Registrar made an order of summary judgment under Order 14 on application by the plaintiff against the defendant. On taking further instructions on December 17, 1975, the solicitor for the defendant filed a notice of appeal against the decision of the Senior Assistant Registrar. On December 18 he asked the Senior Assistant Registrar if the appeal could be made returnable on or before December 20, 1975. The Senior Assistant Registrar told him that was not possible because then the judge was on leave and would only return on December 22 and the earliest date available was January 13, 1976. The Senior Assistant Registrar then gave this date as the day for the hearing of the appeal. Counsel for the appeal (respondent in this appeal) objected to the appeal being heard. He contended that it did not comply with Order 54 rule 21 as it was not made returnable within 5 days and that there should be an application for extension of time.

Held: (1) in dealing with the rule (Order 54 rule 21) it was not enough to consider only the main requirements. Regard must be had to the provision which gave the judge power to allow further time;

(2) where in a notice under this rule (Order 54 rule 21) the Registrar had fixed the time beyond the 5th day, it must be taken that on considering all the circumstances, he, in exercise of the powers conferred by the rule, had allowed further time for the hearing of the appeal. The appellant or his solicitor might make a request to the Registrar for the date of hearing to be within 5 days. But it was a matter for the Registrar to determine whether or not the court would be able to hear the matter on the day fixed. No purpose would be served in giving a mention date if he knew that the judge (in places where there was a single judge) would be in the midst of a criminal trial;

(3) as a matter of practice where further time is allowed, it was desirable that the notice issued should state something to that effect.

Cases referred to:-

(1) *Ahmad bin Yahya & Anor.* v. *Ahmad bin Suleiman* [1972] 2 M.L.J. 109.

(2) *Gooi Seang Tuck* v. *Tan Peng Loon & Anor.* [1959] M.L.J. 153.

CIVIL SUIT.

Chua Jui Meng for the appellant/defendant.

Upali Masacorale for the respondent/plaintiff.

Syed Othman J.: On December 15, 1975 the Senior Assistant Registrar (S.A.R.) made an order of summary judgment under Order 14 on application by the plaintiff against the defendant. On taking further instructions on December 17, 1975, the solicitor for the defendant filed a notice of appeal against the decision of the S.A.R. On December 18 he asked the S.A.R. if the appeal could be made returnable on or before December 20, 1975. The S.A.R. told him that was not possible, because at the time I was on leave and would only return on December 22, 1975, and the earliest date available was January 13, 1976. The S.A.R. then gave this date as the day for hearing of the appeal.

Encik Upali Masacorale, for the plaintiff, (respondent in this appeal) objects to the appeal being heard. He says that it did not comply with Order 54 rule 21 as it was not made returnable within 5 days, and that there should be an application for extension of time.

He relies on *Ahmad bin Yahya & Anor.* v. *Ahmad bin Suleiman.*[1] In the course of arguments reference was also made to *Gooi Seang Tuck* v. *Tan Peng Loon & Anor.*[2]

I do not think *Ahmad's case* is applicable here. There the learned judge was dealing with an appeal from the Sessions Court to the High Court. The period for this appeal is 14 days and the rule applicable is different.

Gooi's case is in point to the present case, as it deals with Order 54 rule 21 as in the present case. Rigby J. at page 153 said:

"As a matter of practice, however, it is as well that advocates and solicitors should note that the primary responsibility rests with them to ensure that the notice of appeal in such matters should not only be taken out but also be made returnable within the period of five days. I think the most suitable course for Counsel to ensure that the notice of appeal is returnable within the period of five days would be to request the Registrar to include in the list (if need be, only for mention) for one or other of the days for the hearing of Chamber matters, namely Mondays or Fridays."

Order 54 rule 21 reads:

"Any person affected by any order or decision of a Registrar may appeal therefrom to a Judge at Chambers. Such appeal shall be by notice in writing to attend before the judge without a fresh summons, within five days after the decision complained of, or such further time as may be allowed by a judge or Registrar. Unless otherwise ordered there shall be at least one clear day between service of the notice of appeal and the day of hearing. An appeal from the decision of a Registrar shall be no stay of proceedings unless so ordered by a judge or Registrar."

With greatest respect to Rigby J., I do not consider what he said above was intended for general application. His statement must be taken to apply only to the particular case before him. From the cases that have appeared before me, I have seen that the strict application of the rule has caused hardship, wastage of time and unnecessary expenses to the parties affected. The requirement may work if the appeal is filed on the day of the Registrar's decision and both parties are in the same place, as this will give the appellant's solicitor sufficient time for service so as to give a clear day's notice. But I cannot imagine how it is humanly possible for the requirement to operate if for example the appeal is lodged on the 4th or 5th day. Even if the parties are in the same place, it would not be possible to give a clear day's notice of hearing as required by the rule.

I can also see that a strict requirement of the 5 day rule will cause hardship if applied to such High Courts where there is no resident judge e.g. Kuala Trengganu and Muar. The judge from other places go to these places at times about fornightly. In these places, I cannot see the good of the Registrar putting up the appeal for mention only before him within the 5 days, and then putting it off to a date of the judge's next visit. Even then the Registrar will have to consider whether the judge will in fact be able to hear the appeal. Further, even in a place where there is a resident judge, I do not see the good of the Registrar fixing the appeal for the judge on a day when he knows very well that the judge will not be able to hear it, as cases for that day may have already been fixed for hearing weeks before. Conditions in the High Courts nowadays are different from those prevailing during the time of *Gooi's case* in 1959.

Encik Upali Masacorale himself has mentioned, in the course of arguments, the hectic experience he had in an appeal under this rule. He got instructions to file the appeal on the 3rd day. Bearing in mind *Gooi's case*, he got it for hearing on the day after, which is the 5th day from the decision. The other party and his solicitors were from Batu Pahat (78 miles from Johor Bahru). In order to comply with the requirement of giving a clear day's notice, Encik Upali sent his clerk by taxi to Batu Pahat to effect the service the same evening. When the matter came up before me, the solicitor from the other side could not attend, as if I am not mistaken, he had to be in attendance in another court on the day of hearing, and further he had not received instructions from his client. The matter had to be put off to another date.

Considering all this, in dealing with the rule I do not think it is enough to consider only the main requirements. Regard must be had to the provision which gives the judge or registrar power to allow further time.

In the present case the appeal was lodged 2 days after the decision. If the rule was to be applied as in *Gooi's case*, it would mean that the appellant must have been served on the 3rd day so as to give one clear day's notice before hearing on the 5th day. The S.A.R. informed the appellant's solicitors that it was not possible to fix the appeal for hearing within 5 days as the judge was on leave. I cannot see what purpose would have been served if the S.A.R. had fixed the 5th day just for mention only, and then put it off to a further day for hearing before the judge. He resorted to a simple expedient and allowed further time, which he is empowered to do under the rule. What the S.A.R. did, to my mind, is very much better and more in the spirit of requirements of the rule than if he had strictly followed the practice stated in *Gooi's case.*

In my view, where in a notice under this rule the Registrar has fixed the time beyond the 5th day, it must be taken that on considering all the circumstances, he, in exercise of the powers conferred by the rule, has allowed further time for the hearing of the appeal. The appellant or solicitor may make a request to the Registrar for the date of hearing to be within 5 days. But it is a matter for the Registrar to determine whether or not the court will in fact be able to hear the matter on the day fixed. I cannot see what purpose will be served in giving a mention date if he knows that the judge (in places where there is a single judge) will be in the midst of a criminal trial.

But I would add that as a matter of practice where further time is allowed, I think it is desirable that the notice issued should state something to that effect.

Order accordingly.

Solicitors: *Jackson & Masacorale; Chua Bros.*